SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1950~~ 51

No. ~~668~~ 25

SUTPHEN ESTATES, INC.,

Appellant,

vs.

THE UNITED STATES OF AMERICA, LOEW'S INCORPORATED, WARNER BROS. PICTURES, INC., ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

STATEMENT AS TO JURISDICTION

BERTRAM F. SHIPMAN,
Counsel for Appellant.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Equity No. 87-273

SUTPHEN ESTATES, INC.,
Petitioner-Appellant,

against

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

AND

LOEW'S INCORPORATED, WARNER BROS. PICTURES, INC., WARNER BROS. PICTURES DISTRIBUTING CORPORATION (FORMERLY KNOWN AS VITAGRAPH, INC.), WARNER BROS. CIRCUIT MANAGEMENT CORPORATION, TWENTIETH CENTURY-FOX FILM CORPORATION, NATIONAL THEATRES CORPORATION, COLUMBIA PICTURES CORPORATION, SCREEN GEMS, INC., COLUMBIA PICTURES OF LOUISIANA, INC., UNIVERSAL CORPORATION, UNIVERSAL PICTURES COMPANY, INC., UNIVERSAL FILM EXCHANGES, INC., BIG U. FILM EXCHANGE, INC., AND UNITED ARTISTS CORPORATION,
Defendants-Appellees

STATEMENT AS TO JURISDICTION SUBMITTED WITH PETITION FOR APPEAL

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, Sutphen Estates, Inc., Petitioner-Appellant in the above entitled cause (here-

inafter called Appellant), submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction upon appeal to review the judgment and order of the District Court complained of.

The action was brought by the United States to enjoin violations of the Sherman Act by defendants in connection with their production, distribution and exhibition of motion pictures. The trial by a special three-judge court appointed pursuant to the Expediting Act (15 U. S. C., Sec. 28) resulted in a decision that defendants had violated the antitrust laws (*U. S.* v. *Paramount Pictures, Inc., et al.*, 66 F. Supp. 323 (1946)) and a final decree was entered December 31, 1946. *United States* v. *Paramount Pictures, Inc., et al.*, 70 F. Supp. 53 (1946). On direct appeal the Supreme Court affirmed in part and reversed in part (*U. S.* v. *Paramount, et al.*, 334 U. S. 131 (1948)). After remand and further proceedings in the District Court, its decision was handed down (*U. S.* v. *Paramount Pictures, Inc., et al.*, 85 F. Supp. 881 (1949)) and the final decree was entered February 8, 1950.[1] On direct appeal said final decree was affirmed without opinion (*Loew's Inc., et al.*, v. *U. S.*, 339 U. S. 974 (1950)).

Thereafter a consent judgment formulated by the United States and the Warner defendants[2] was made January 4, 1951 and entered January 5, 1951, which states in its opening sentence "This judgment is rendered and entered in lieu of and in substitution for the decrees of this Court dated December 31, 1946, as amended, and February 8, 1950." A motion by Appellant to intervene, which was heard on January 4, 1951, was denied prior to the signing

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[1] Prior to this decree, the Paramount defendants and the RKO defendants entered into Consent Decrees and the cause was severed as to them.

[2] Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corporation and Warner Bros. Circuit Management Corporation.

of said Consent Judgment on said date. The formal order denying said motion to intervene was made and entered February 26, 1951. The appeal is from said Consent Judgment and said Order.

The District Court rendered no opinion on the signing of the Consent Judgment or in denying Appellant's motion to intervene.

Statutory Provisions Conferring Jurisdiction

The jurisdiction of the Supreme Court to review by direct appeal said Consent Judgment and said Order denying Appellant's motion for leave to intervene, is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (15 U. S. C., Sec. 29), which provides:

> "In every civil action brought in any district court of the United States under any of said Acts (including sections 1 and 2 of the Sherman Anti-Trust Act) wherein the United States is complaining, an appeal from the final decree of the district court will lie only to the supreme court."

and Title 28, United States Code, Sec. 2101, which provides in part:

> "(b) Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceeding, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days, if final."

The following cases support the jurisdiction of the Supreme Court to review on direct appeal the Consent Judgment and Order herein: *U. S.* v. *California Canneries*, 279 U. S. 553, 557-560 (1929); *United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131, 176-178 (1948); *Missouri-Kansas*

Pipe Line Co. v. *United States*, 312 U. S. 502, 505-508 (1941).

In the *California Canneries* case it was held that the Expediting Act conferred exclusive jurisdiction upon the Supreme Court to hear an appeal from the denial of a motion for leave to intervene in an antitrust action.

In the *Paramount Pictures* case (which is the decision on the first appeal of this cause) the Supreme Court entertained a direct appeal from the denial by the District Court of a motion for leave to intervene as of right and affirmed the order.

Statutes and Rules Involved

The Sherman Antitrust Act of July 2, 1890, as amended (15 U.S.C., Secs. 1, 2 and 4) reads in part:

> "§1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. * * *
>
> "§2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *.
>
> * * * * * * *
>
> "§4. The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1-7 and 15 of this title."

Appellant's motion for leave to intervene was based on Rule 24(a) of the Federal Rules of Civil Procedure which reads in part:

> "(a) Intervention of right. On timely application anyone shall be permitted to intervene in an action: * * * (2) when the representation of the applicant's

interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court, or an officer thereof."

and also upon Rule 24(b) of the Federal Rules of Civil Procedure which reads in part:

"(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: * * * (2) when an applicant's claim or defense and the main action have a question of law or fact in common. * * * In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

and upon the due process clause of the Fifth Amendment to the Constitution of the United States:

"No person shall be * * * deprived of life, liberty, or property without due process of law; * * *."

Dates of Judgment and Order and Petition for Appeal

The appeal is from the Consent Judgment herein made January 4, 1951 and entered January 5, 1951, and from the order denying Appellant's motion for leave to intervene made and entered on February 26, 1951.

The petition for appeal herein was filed March 2, 1951.

The Nature of the Case and the Rulings of the Court

(a) *The Consent Judgment:*

The Consent Judgment of January 4, 1951 requires defendant Warner Bros. Pictures, Inc. (hereinafter called Warner) to submit to its stockholders a plan of reorganiza-

tion to effect divorcement of its theatre assets from its production and distribution assets, which plan should provide that (a) all of its theatre assets should be transferred to a new Theatre Company, (b) all of its production and distribution assets should be transferred to a new Picture Company, (c) all of the common capital stock of the two new companies should be distributed to the stockholders of Warner in exchange for the assets so transferred to them, and (d) Warner should thereupon be dissolved.

(b) *Contract of Guaranty between Warner and Appellant.*

Appellant is the lessor under a lease dated December 31, 1928 to Stanley Mark Strand Corporation, an indirect subsidiary of Warner. The lease covers premises on the northwest corner of Broadway and 47th Street in the City of New York, together with the buildings thereon, including the well-known Strand Theatre. The lease is for a full term of approximately 98 years ending December 31, 2026. Current cash rental (which is subject to increase in the successive specified periods of the term) is at the rate of $300,000 per annum and in addition the tenant is obligated to pay taxes, water rates and other charges assumed by the tenant. The lease, as amended, includes an obligation by the tenant to alter and improve the present buildings (in a manner specified in the lease) at or prior to the expiration of the term of the lease, at an estimated cost of $1,000,000 and provides that the tenant shall pay to the lessor (Appellant) $100,000 a year for ten years beginning December 15, 1948, to be deposited by the lessor in a separate trust account as security against default of the tenant with respect to such obligation.

All obligations of the tenant under the lease as amended are unconditionally guaranteed by Warner, which owns more than 90% of the capital stock of Stanley Corporation of America which, in turn, owns all of the capital stock of

Stanley Mark Strand Corporation, the tenant. The minimum cash obligation of the tenant under the lease for the balance of the term (approximately 76 years), and therefore the contingent cash liability of Warner as guarantor, is more than $23,000,000. Said guaranty of Warner is a valid subsisting obligation unrelated to any antitrust violations by Warner or any other defendant in this cause.

Learning of the proposed Consent Judgment and that it was to be brought on for hearing on January 4, 1951, Appellant sought by motion (brought on by an order to show cause returnable on the same day) to intervene in said cause for the purpose of asserting its claim under said guaranty, assuring its preservation and obtaining relief against its destruction or impairment, either by an appropriate provision in the Consent Judgment or by separate order made and entered in this cause.

Appellant's motion was heard during the hearing on the Consent Judgment, the District Court announced its decision denying the motion and the Consent Judgment was thereupon signed and the formal order denying Appellant's motion to intervene was made and entered on February 26, 1951.

(c) *Effect of the Consent Judgment on the Guaranty Contract.*

That effect is direct and ruinous. Upon the transfer of Warner's assets to the two new companies in exchange for their capital stock to be distributed to Warner's stockholders, Warner, the guarantor, will be rendered insolvent and upon the dissolution of Warner the guaranty contract will be destroyed.

The District Court's final decree of February 8, 1950, affirmed by the Supreme Court, did not require such a reorganization as that included in the Consent Judgment, nor a dissolution of Warner. It merely required a divorcement

of Warner's theatre business from its production and distribution business. Warner's selection of the particular plan, from among numerous alternative methods of complying with said decree, was presumably because it was considered most advantageous economically to the stockholders of Warner as a tax-free reorganization.

Under settled doctrine, if the reorganization were voluntary the two transferee corporations would be liable for the obligations of Warner, since the result would be merely a reincorporation of Warner into two new corporations having identical stockholders. *Calvin* v. *Washington Properties,* 121 F. (2d) 19, 25 (C.A.D.C., 1941); *Pearce* v. *Schneider,* 242 Mich. 28; 217 N.W. 761 (1928); *Bankers Trust Co.* v. *Hale & Kilburn Corporation,* 84 F. (2d) 401 (C.A. 2nd, 1936); *Northern Pacific Ry.* v. *Boyd,* 228 U.S. 482, 502-503 (1918); *Male* v. *Atchison, Topeka & Santa Fe Ry. Co.,* 230 N.Y. 158, 165 (1920).

The Court of Appeals of New York has held that the transfer by Paramount Pictures, Inc. of all of its assets to two new corporations organized pursuant to a plan of reorganization required by the Paramount Consent Decree in this cause was not voluntary and therefore stockholders of Paramount were not entitled to have their stock appraised under Section 21 of the Stock Corporation Law of New York. *Kokel* v. *Paramount Pictures, Inc.,* 300 N.Y. 685 (1950).

But even if the transfers were voluntary, since Warner's guaranty obligation is contingent, and the guaranteed lease has some 76 years to run, Appellant is left not only without a guaranty but without any adequate remedy.

The Questions Involved Are Substantial

1. *Appellant's Right to Intervene.*

In its motion papers Appellant claimed intervention as of right under clauses 2 and 3 of Rule 24(a) of the Federal

Rules of Civil Procedure and also under the due process clause of the Fifth Amendment of the Constitution of the United States.

(a) *The representation of Appellant's interest by existing parties is inadequate and Appellant is or may be bound by the Consent Judgment.*

Warner presumably represents its stockholders and creditors. Its representation of Appellant is obviously inadequate. No provision was made in the Consent Decree for the preservation of, or a substitute for, the guaranty obligation. In the absence of an adequate remedy Appellant may be left with no alternative but to accept such substitute as Warner may voluntarily offer. It is equally manifest that Appellant will be bound by the Consent Judgment which compels the transfer of assets by, and dissolution of, Warner.

(b) *Appellant is so situated as to be adversely affected by the distribution or other disposition of property subject to the disposition of the Court.*

By the Consent Decree the District Court has directed the disposition of all of the assets of Warner by approving and requiring the carrying out of the plan of reorganization therein provided for. The result is as effectively to impair or destroy Appellant's property rights in the guaranty contract as if the decree had in terms dealt with the contract.

(c) *The Consent Decree deprives Appellant of property without due process of law.*

The destruction of Appellant's guaranty by the Consent Decree has been effected without notice to Appellant and without affording it an opportunity to be heard.

In *California Co-Op. Canneries* v. *U.S.*, 299 Fed. 908 (C.A.D.C. 1924), in ruling that a motion to intervene in a

Federal antitrust case had been improperly denied, Associate Justice Rutledge said:

> "* * * When an equity court, in the exercise of its jurisdiction, makes a decree which, in determining the rights of the parties, enjoins one of them from carrying out a lawful contract with persons not parties to the suit, and gives effect to a cancellation clause of such contract, it is the duty of the court, if it retains jurisdiction of the case, as in this instance, to permit the intervention of the contracting party, who is not a party to the original suit, and who is detrimentally affected by the decree, and to give him an opportunity to be heard.
>
> "As we have observed, without intervention appellant would be left remediless. Valuable contract rights have been stricken down, without notice to appellant or an opportunity to be heard. It is a fundamental principle of our jurisprudence that, before private rights may be affected by judicial decree, the party in interest must have due notice and an opportunity to be heard. Upon the strict observance of this principle rests the security of the citizen in the enjoyment of life, liberty, and property; otherwise, these rights could be divested without due process of law." (p. 914).

This case was reversed by the Supreme Court (279 U.S. 553 (1929)) but solely because the District Court of Appeals was without jurisdiction since the Supreme Court had exclusive jurisdiction by direct appeal from the District Court. The opinion of Associate Justice Rutledge is nonetheless cogent as indicating the substantial nature of the question involved in this case.

Appellant's motion was timely. The Warner guaranty was not impaired or destroyed by the previous decrees in this cause made on December 31, 1946 and February 8, 1950. Its impairment and destruction were effected by the Consent Judgment. Appellant's motion to intervene was

brought on for hearing before the signing of the Consent Judgment by an order to show cause issued by the District Court on an affidavit with pleading in intervention attached. The claim of Appellant was fully set forth therein and intervention was prayed in order that Appellant might assert the claim set forth in the intervention pleading. The prayer of said pleading was in substance that the District Court in the Consent Judgment or by separate order provide for the preservation of the guaranty obligations of Warner or provide an equivalent substitute therefor, including an assumption thereof by the two new corporations.

The District Court is charged with the duty of conserving the property interests of innocent third parties in connection with formulation of its decree in the antitrust action. *United States* v. *American Tobacco Co.*, 221 U.S. 106, 185 (1911); *United States* v. *Union Pacific Railroad Co.*, 226 U.S. 470, 477 (1913).

In the *American Tobacco Co.* case the Supreme Court stated that dissolution decrees entered under the Sherman Act should have a proper regard for the vast interests of private property which may have become vested in persons who had no part in the Sherman Act Violations. Again in the *Union Pacific Railroad Co.* case the Supreme Court stated that in so far as was consistent with the main purpose of effecting the end of unlawful combinations, an equity court dealing with such combinations "shall conserve the property interests involved". (226 U.S. at p. 477).

Appellant does not challenge the Consent Decree except in so far as it affects Appellant's property and rights without making any provision for their conservation or for a substitute for the Warner guaranty.

Appellant contends that it is entitled to an equivalent substitute and that it is entitled as of right to have the District Court, which by its judgment destroyed the guaranty,

judicially ascertain such substitute equivalent for the guaranty.

That contention is supported by the decision of the Supreme Court in *Continental Insurance Company* v. *United States, Reading Company, et al.*, 259 U. S. 156 (1922). In that action brought under the Sherman Antitrust Act and the Commodities Clause of the Interstate Commerce Act, it was found necessary in a plan of reorganization under a decree requiring separation of coal properties from railroad properties, to disturb a general mortgage covering both properties. Although the mortgage was condemned by the Supreme Court (Mr. Chief Justice Taft writing for the Court) as "the indispensable instrument of the unlawful conspiracy to restrain commerce" (259 U.S. at p. 172), that Court nevertheless held that a judicially ascertained equivalent substitute should be provided for the general mortgage. In so ruling it quoted as expressing the views of the Supreme Court the following from an unreported opinion of the Court of Appeals of the Sixth Circuit in a phase of a similar case (*U.S.* v. *Lake Shore & M. S. Ry. Co.*, 203 Fed. 295):

> " 'One who takes a mortgage upon several items of property of such character that their common ownership or operation may offend against the Anti-Trust Law or the commodities clause, and such that the mortgage serves practically to aid in tying them together, must be deemed to hold his mortgage subject to the contingency that if the complete and final separation of one item of the mortgaged property from the remainder becomes essential to the due enforcement of either named law, the court charged with such enforcement may take control of that item, free it from the consolidating tendency of the mortgage, *and substitute therefor its judicially ascertained equivalent.* Otherwise the mortgage will stand as the ready means of restoring—or at least tending to restore—these conditions which

the court is endeavoring to destroy. It may well be true that a railroad and a coal company under common ownership and management are worth more as security under a mortgage than when independent, and that their effective separation does impair the mortgage security, but this can not make the law helpless.'" (259 U.S., at pp. 172-173).

In the *Continental Company* case the District Court was directed by decree to modify the liability of the Reading Company and the Coal Company on the mortgage bonds in proportion to the values of their respective properties covered by the mortgage and to include, among other things, specific provisions for foreclosure of the separate liens on default.

The principle applies *a fortiori* to the guaranty of Warner which is a valid, subsisting and enforceable contract wholly unrelated to any violation of the antitrust laws or to any charge of illegality made by the Government in this cause.

List of Exhibits

Annexed hereto are copies of the following:

(1) Copy of the decree of the District Court dated February 8, 1950, marked Exhibit 1; (2) copy of the Consent Judgment, dated January 4, 1951, marked Exhibit 2; (3) copy of the order dated February 26, 1951, denying Appellant's motion to intervene, marked Exhibit 3; and (4) copy of Appellant's motion papers (including Order to Show Cause, Affidavit and Pleading in Intervention) marked Exhibit 4.

Conclusion

The appeal petitioned for is within the exclusive jurisdiction of the Supreme Court. All jurisdictional requirements have been met. The appeal presents substantial questions meriting a review by the Supreme Court.

Respectfully submitted,

(s) BERTRAM F. SHIPMAN, *of*
Mudge, Stern, Williams & Tucker
40 Wall Street
New York, N. Y.
Attorneys for Appellant

Date: March 2, 1951.

EXHIBIT 1

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Equity No. 87-273

UNITED STATES OF AMERICA, *Plaintiff*,

against

LOEW'S INCORPORATED, WARNER BROS. PICTURES, INC., WARNER BROS. PICTURES DISTRIBUTING CORPORATION (Formerly Known as Vitagraph, Inc.), WARNER BROS. CIRCUIT MANAGEMENT CORPORATION, TWENTIETH CENTURY-FOX FILM CORPORATION, NATIONAL THEATRES CORPORATION, COLUMBIA PICTURES CORPORATION, SCREEN GEMS, INC., COLUMBIA PICTURES OF LOUISIANA, INC., UNIVERSAL CORPORATION, UNIVERSAL PICTURES COMPANY, INC., UNIVERSAL FILM EXCHANGES, INC., BIG U. FILM EXCHANGE, INC., and UNITED ARTISTS CORPORATION, *Defendants*.

FINAL DECREE

The plaintiff, having filed its petition herein on July 29, 1938, and its amended and supplemental complaint on November 14, 1940; the defendants having filed their answers to such complaint, denying the substantive allegations thereof; the court after trial having entered a decree herein, dated December 31, 1946, as modified by order entered February 11, 1947; the plaintiff and the defendants having appealed from such decree; the Supreme Court of the United States having in part affirmed and in part reversed such decree, and having remanded this case to this court for further proceedings in conformity with its opinion dated May 3, 1948; this court having, on June 25, 1948, by order made the mandate and decree of the Supreme Court the order and judgment of this court; a consent decree having been entered on November 8, 1948, against the defendants Radio-Keith-Orpheum Corporation, RKO

west Corporation, and Keith-Albee-Orpheum Corporation; orders having been entered on stipulation against the Fox, Loew, and Warner defendants respectively, and Loew having further stipulated in the record, with respect to certain theatre interests held jointly with others; and a consent judgment having been entered on March 3, 1949 against defendants Paramount Pictures, Inc. and Paramount Film Distributing Corporation; and an order having been entered on April 21, 1949, severing and terminating, as of March 3, 1949, this action as against defendants Paramount Pictures, Inc. and Paramount Film Distributing Corporation; and an order having been entered on January 18, 1950 severing and terminating as of November 8, 1948 the action as against defendants Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., RKO Proctor Corporation, RKO Midwest Corporation and Keith-Albee-Orpheum Corporation;

Now, having considered the proposals of the parties, having duly received additional evidence and heard further arguments after entry of the consent decree against the RKO defendants, and having rendered its opinion on July 25, 1949, and having filed its findings of fact and conclusions of law in accordance with said opinion.

It is hereby ordered, adjudged, and decreed that the decree heretofore entered by this court on December 31, 1946 is hereby amended to read as follows:

I

1. The findings of fact and conclusions of law heretofore made are superseded by the findings and conclusions now entered in support of this decree.

2. The complaint is dismissed as to all claims made against the defendants herein based upon their acts as producers, whether as individuals or in conjunction with others.

II

Each of the defendant distributors, Loews, Incorporated; Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corporation (formerly known as Vitagraph, Inc.), Twentieth Century-Fox Film Corporation, and the succes-

sors of each of them (including but not limited to companies resulting from divorcement), and any and all individuals who act in behalf of any thereof with respect to the matters enjoined, and each corporation in which said defendants or any of them own a direct or indirect stock interest of more than fifty per cent, is hereby enjoined:

1. From granting any license in which minimum prices for admission to a theatre are fixed by the parties, either in writing or through a committee, or through arbitration, or upon the happening of any event or in any manner or by any means.

2. From agreeing with each other or with any exhibitors or distributors to maintain a system of clearances; the term "clearances" as used herein meaning the period of time stipulated in license contracts which must elapse between runs of the same feature within a particular area or in specified theatres.

3. From granting any clearance between theatres not in substantial competition.

4. From granting or enforcing any clearance against theatres in substantial competition with the theatre receiving the license for exhibition in excess of what is reasonably necessary to protect the licensee in the run granted. Whenever any clearance provision is attacked as not legal under the provisions of this decree, the burden shall be upon the distributor to sustain the legality thereof.

5. From further performing any existing franchise to which it is a party and from making any franchises in the future, except for the purpose of enabling an independent exhibitor to operate a theatre in competition with a theatre affiliated with a defendant or with theatres in new circuits which may be formed as a result of divorcement. The term "franchise" as used herein means a licensing agreement or series of licensing agreements, entered into as a part of the same transaction, in effect for more than one motion picture season and covering the exhibition of pictures released by one distributor during the entire period of agreement.

6. From making or further performing any formula deal or master agreement to which it is a party. The term "formula deal" as used herein means a licensing agree-

ment with a circuit of theatres in which the license fee of a given feature is measured for the theatres covered by the agreement by a specified percentage of the feature's national gross. The term "master agreement" means a licensing agreement, also known as a "blanket deal", covering the exhibition of features in a number of theatres usually comprising a circuit.

7. From performing or entering into any license in which the right to exhibit one feature is conditioned upon the licensee's taking one or more other features. To the extent that any of the features have not been trade shown prior to the granting of the license for more than a single feature, the licensee shall be given by the licensor the right to reject twenty per cent of such features not trade shown prior to the granting of the license, such right of rejection to be exercised in the order of release within ten days after there has been an opportunity afforded to the licensee to inspect the feature.

8. From licensing any feature for exhibition upon any run in any theatre in any other manner than that each license shall be offered and taken theatre by theatre, solely upon the merits and without discrimination in favor of affiliated theatres, circuit theatres or others.

III

Each of the defendant exhibitors, Loew's, Incorporated; Warner Bros. Pictures, Inc.; Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; and National Theatres Corporation; and the successors of each of them (including but not limited to companies resulting from divorcement), and any and all individuals who act in behalf of any thereof with respect to the matters enjoined, and each corporation in which said defendants or any of them own a direct or indirect stock interest of more than fifty per cent, is hereby enjoined and restrained:

1. From performing or enforcing agreements, if any, referred to in Paragraphs 5 and 6 of the foregoing Section II hereof to which it may be a party.

2. From making or continuing to perform pooling agreements whereby given theatres of two or more exhibitors

normally in competition are operated as a unit or whereby the business policies of such exhibitors are collectively determined by a joint committee or by one of the exhibitors or whereby profits of the "pooled" theatres are divided among the owners according to prearranged percentages.

3. From making or continuing to perform agreements that the parties may not acquire other theatres in a competitive area where a pool operates without first offering them for inclusion in the pool.

4. From making or continuing leases of theatres under which it leases any of its theatres to another defendant or to an independent operating a theatre in the same competitive area in return for a share in the profits.

5. From continuing to own or acquiring any beneficial interests in any theatre, whether in fee or in shares of stock or otherwise, in conjunction with another defendant, or with any company resulting from divorcements provided for in decrees entered in this cause.

6. From acquiring a beneficial interest in any additional theatre unless the acquiring company shall show to the satisfaction of the court, and the court shall first find, that such acquisition will not unduly restrain competition in the exhibition of feature motion pictures, provided, however, that the acquisition of a theatre as a replacement for a theatre, held or acquired in conformity with this decree, which may be lost through physical destruction, conversion to non-theatrical purposes, disposition (other than the disposition of a theatre in compliance with this decree) or expiration or cancellation of the lease under which such theatre is held, shall not be deemed to be the acquisition of an additional theatre.

7. From operating, booking, or buying features for any of its theatres through any agent who is known by it to be also acting in such manner for any other exhibitor, independent or affiliate.

IV

1. Within six months from the entry of this decree each of the major defendants named in Sections II and III of this decree shall submit a plan for the ultimate separation of its distribution and production business from its exhibi-

tion business. Upon the filing of such a plan, the Government shall have three months within which to file objections thereto and propose amended or alternative plans for accomplishing the same result. Such further proceedings with respect to such plans as the court may then order shall then be had. Such plans shall, in any event, provide for the completion of such separation within three years from the date of the entry of this decree.

2. Within one year from the entry of this decree the Government and each of the defendant exhibitors named in Section III of this decree shall submit respectively such plans for divestiture of theatre interests, other than those heretofore ordered to be divested, which they believe to be adequate to satisfy the requirements of the Supreme Court decision herein with respect to such divestiture. Upon the filing of such a plan the Government and the affected defendant shall have six months within which to file objections thereto and propose amended or alternative plans for accomplishing the same result. Such further proceedings with respect to such plans may then be had as the court may then order.

3. No defendant distributor named in Section II of this decree, and no distributor company resulting from the divorcement ordered herein, shall engage in the exhibition business; and no defendant exhibitor named in Section III of this decree, and no exhibitor company resulting from the divorcement ordered herein, shall engage in the exhibition business, except that permission to a distributor company resulting from divorcement to engage in the exhibition business or to an exhibitor company resulting from divorcement to engage in the distribution business may be granted by the court upon notice to the United States and upon a showing that any such engagement shall not unreasonably restrain competition in the distribution or exhibition of motion pictures.

4. No exhibitor company resulting from the divorcement ordered herein shall acquire directly or indirectly any interest in any theatre divested by any other defendant pursuant to any plan ordered under Paragraph 2 of Section IV hereof or pursuant to Paragraph C 1 of Section III of the

Consent Judgment as to the Paramount defendants entered March 3, 1949.

V

Nothing contained in this decree shall be construed to limit, in any way whatsoever, the right of each major defendant bound by this decree, during the three years allowed for the completion of the plan of reorganization provided for in Section IV, to license, or in any way to provide for, the exhibition of any or all the motion pictures which it may at any time distribute, in such manner, and upon such terms, and subject to such conditions as may be satisfactory to it, in any theatre in which such defendant has a proprietary interest, either directly or through subsidiaries.

VI

The defendant distributors named in Section II of this decree and any others who are willing to file with the American Arbitration Association their consent to abide by the rules of arbitration and to perform the awards of arbitrators, are hereby authorized to set up an arbitration system with an accompanying Appeal Board which will become effective as soon as it may be organized, upon terms to be settled by the court upon notice to the parties to this action.

VII

The provisions of the existing consent decree are hereby declared to be of no further force or effect, except in so far as may be necessary to conclude arbitration proceedings now pending and to liquidate in an orderly manner the financial obligations of the defendants and the American Arbitration Association, incurred in the establishment of the consent decree arbitration systems. Existing awards and those made pursuant to pending proceedings shall continue to be enforceable.

VIII

1. For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General, and on notice to any defendant bound by this decree, reason-

able as to time and subject matter, made to such defendant at its principal office, and subject to any legally recognized privilege (a) be permitted reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this decree, and that during the times that the plaintiff shall desire such access, counsel for such defendant may be present, and (b) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its officers or employees regarding any such matters, at which interviews counsel for the officer or employee interviewed and counsel for such defendant may be present. For the purpose of securing compliance with this decree any defendant upon the written request of the Attorney General, or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in this decree as from time to time may be necessary for the purpose of enforcement of this decree.

2. Information obtained pursuant to the provisions of this Section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

IX

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree, and no others, to apply to the court at any time for such orders or direction as may be necessary or appropriate for the construction, modification, or carrying out of the same, for the enforcement of compliance therewith, and for the punishment of violations thereof, or for other or further relief.

Dated: February 8, 1950.

AUGUSTUS N. HAND,
United States Circuit Judge.
HENRY W. GODDARD,
United States District Judge.
ALFRED C. COXE,
United States District Judge.

P. 23

EXHIBIT 2

United States District Court,
SOUTHERN DISTRICT OF NEW YORK.

Equity No. 87-273.

UNITED STATES OF AMERICA,

Plaintiff,

—against—

LOEW'S INCORPORATED, *et al.*,

Defendants.

CONSENT JUDGMENT AS TO THE WARNER DEFENDANTS.

The Warner defendants having consented to the entry of this judgment without admission by them in respect to any issues or matters in this cause open on remand, and the Court having considered the matter,

NOW, THEREFORE, UPON CONSENT OF THE PARTIES HERETO WITH RESPECT TO THE ISSUES AS TO WHICH ACTION WAS SUSPENDED OR RESERVED BY THE COURT, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

I.

This judgment is rendered and entered in lieu of and in substitution for the decrees of this Court dated December 31, 1946, as amended, and February 8, 1950. This judgment shall be of no further force and effect and this cause shall be restored to the docket without prejudice to

either party if the proposed reorganization of the Warner defendants shall not have been approved by the stockholders of Warner Bros. Pictures, Inc. within ninety (90) days from the entry of this judgment. Upon such approval by the stockholders this cause shall be severed and terminated against the Warner defendants as of the date of this judgment.

II.

The Complaint is dismissed as to all claims made against the Warner defendants based upon their acts as producers of motion pictures, whether as individuals or in conjunction with others.

III.

The defendant Warner Bros. Pictures Distributing Corporation, its subsidiaries in which it has more than a fifty per cent interest, its successors, its officers, agents, servants and employees are each hereby enjoined:

1. From granting any license in which minimum prices for admission to a theatre are fixed by the parties, either in writing or through a committee, or through arbitration, or upon the happening of any event or in any manner or by any means.

2. From agreeing with each other or with any exhibitors or distributors to maintain a system of clearances; the term "clearances" as used herein meaning the period of time stipulated in license contracts which must elapse between runs of the same feature within a particular area or in specified theatres.

3. From granting any clearance between theatres not

4. From granting or enforcing any clearance against theatres in substantial competition with the theatre receiving the license for exhibition in excess of what is reasonably necessary to protect the licensee in the run granted. Whenever any clearance provision is attacked as not legal under the provisions of this judgment, the burden shall be upon the distributor to sustain the legality thereof.

5. From further performing any existing franchise to which it is a party and from making any franchises in the future, except for the purpose of enabling an independent exhibitor to operate a theatre in competition with a theatre affiliated with a defendant* or with theatres in new circuits which may be formed as a result of divorcement, provided for in judgments entered in this cause. The term "franchise" as used herein means a licensing agreement or series of licensing agreements, entered into as a part of the same transaction, in effect for more than one motion picture season and covering the exhibition of pictures released by one distributor during the entire period of agreement.

6. From making or further performing any formula deal or master agreement to which it is a party. The term "formula deal" as used herein means a licensing agreement with a circuit of theatres in which the license fee of a given feature is measured for the theatres covered by the agreement by a specified percentage of the feature's national gross. The term "master agreement" means a licensing agreement, also known as a "blanket deal", covering the exhibition of features in a number of theatres usually comprising a circuit.

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* As used in this judgment, the term "defendant" or "defendants" means the defendants, or any of them, in Eq. Cause No. 87-273.

7. From performing or entering into any license in which the right to exhibit one feature is conditioned upon the licensee's taking one or more other features. To the extent that any of the features have not been trade shown prior to the granting of the license for more than a single feature, the licensee shall be given by the licensor the right to reject twenty percent of such features not trade shown prior to the granting of the license, such right of rejection to be exercised in the order of release within ten days after there has been an opportunity afforded to the licensee to inspect the feature.

8. From licensing any feature for exhibition upon any run in any theatre in any other manner than that each license shall be offered and taken theatre by theatre, solely upon the merits and without discrimination in favor of affiliated theatres, circuit theatres or others.

IV.

The defendants Warner Bros. Pictures Inc. and Warner Bros. Circuit Management Corporation, their theatre subsidiaries in which they have more than a fifty per cent interest, their successors, their officers, agents, servants and employees are each hereby enjoined:

1. From performing or enforcing agreements referred to in paragraphs 5 and 6 of the foregoing Section III hereof to which it may be a party.

2. From making pooling agreements whereby given theatres of two or more exhibitors normally in competition are operated as a unit or whereby the business policies of such exhibitors are collectively determined by a joint committee or by one of the exhibitors or whereby profits of the "pooled" theatres are divided among the owners according to prearranged percentages.

3. From making agreements that the parties may not acquire other theatres in a competitive area where a pool operates without first offering them for inclusion in the pool.

4. From making leases of theatres under which it leases any of its theatres to another defendant or to an independent operating a theatre in the same competitive area in return for a share of the profits.

5. From acquiring any beneficial interest in any theatre, whether in fee or in shares of stock or otherwise, in conjunction with another defendant, or with any company which may be formed as a result of divorcement provided for in judgments entered in this cause.

6. From acquiring a beneficial interest in any theatre provided that:

(a) Until the divorcement and divestiture* provisions of this judgment have been carried out, beneficial interests in theatres may be acquired

(i) As a substantially equivalent replacement for and in the immediate neighborhood of wholly owned theatres** held or acquired in conformity with this judgment which may be lost through physical destruction or conversion to non-theatrical purposes;

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* Divestiture under the terms of this paragraph 6 shall be deemed to mean the disposition of Warner's interest in the theatres referred to in paragraph 1 of Section V other than theatres which Warner or its exhibitor successor may in the future be required to dispose of thereunder (as distinguished from those presently required to be disposed of) and the theatres referred to in paragraph 3 of Section V.

** As used in this judgment the word "theatre" means "motion picture theatre in the United States" and the phrase "wholly owned theatre" means a theatre in which Warner or its exhibitor successor, or Warner or its exhibitor successor together with persons who are solely investors, own a beneficial interest of 95% or more in the lease or fee thereof.

(ii) In renewing leases covering any wholly owned theatre held or acquired in conformity with this judgment or in acquiring an additional interest in any such theatre under lease;

(iii) As a substantially equivalent replacement for any wholly owned theatre held or acquired in conformity with this judgment which has been lost through inability to obtain a renewal of the lease thereof upon reasonable terms, if Warner or its exhibitor successor shall show to the satisfaction of the Court, and the Court shall first find, that such acquisition will not unduly restrain competition.

(b) After the divorcement and divestiture provisions of this judgment have been carried out, Warner's exhibitor successor may acquire a beneficial interest in any theatre only in the situations covered by paragraphs (i) and (ii) of the preceding subsection (a) unless Warner's exhibitor successor shall show to the satisfaction of the Court, and the Court shall first find, that the acquisition will not unduly restrain competition.

7. From operating, booking or buying features for any of its theatres through any agent who is known by it to be also acting in such manner for any other exhibitor, independent or affiliate.

8. From making any agreement which restricts the right of any other exhibitor to acquire a motion picture theatre.

9. From acquiring in conjunction with any actual or potential independent exhibitor any beneficial interest in motion picture theatres.

V.

1. Warner or its successor shall dispose of all its interest in the following theatres in the following towns:

Ansonia, Conn.	One theatre; purchaser to have choice of theatres if Ansonia is designated as herein provided.[1]
Appleton, Wis.	One theatre if by the end of one year from the date of this judgment an independent[2] theatre is not regularly playing first run, or if thereafter (during a period of five years from the date of this judgment) for the greater part of any year an independent theatre is not regularly playing first run.[3] If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.
Bristol, Conn.	One theatre.

[1] Within four months after the entry of this judgment, Warner shall designate two cities from among Ansonia, Conn., Gettysburg, Pa., Pleasantville, New Jersey, and Sidney, Ohio, in which the purchaser is to have his choice of theatre. No offer for the smaller theatre in each of such two cities shall be accepted until thirty days have elapsed after the properties have been offered for sale. The larger theatre in each of such two cities shall be sold if a reasonable offer therefor is made either during the thirty days or thereafter before the acceptance of a reasonable offer for the smaller theatre.

[2] As used herein, the term "independent" or "independently" refers to any theatre not affiliated with any of the defendants in Eq. Cause No. 87-273.

[3] As used in this judgment "first run" means first run of the eight distributor defendants in Eq. Cause No. 87-273.

CHESTER, PA.	One theatre.
CLIFTON FORGE, VA.	One theatre.
CLINTON, MASS.	One theatre.
COSHOCTON, OHIO	One theatre, if at any time during a period of 3 years from the date of this judgment two Warner theatres play first run at a time when there is not more than one other theatre operating first run in Coshocton, except that there may be shown at the Pastime Theatre pictures for which a competitor who has had an opportunity to request licenses had not made an offer or had made an insubstantial offer, provided that upon the sole determination by the Attorney General or an Assistant Attorney General that a competing first run theatre will be adversely affected by the first run showing of such pictures at such theatre, Warner shall cease the showing of any pictures first run at such theatre within 30 days after receipt by Warner of the notice by the Attorney General of his determination.
DANBURY, CONN.	Empress or Palace, or Capitol. If Capitol is sold defendant or its successor must file with the Attorney General and the Court a statement of intention by the purchaser to operate said theatre on a first run basis.
DONORA, PA.	Harris or Princess.
DOVER, N. J.	One theatre.

Elmira, N. Y.	One theatre, if at any time during a period of 3 years from the date of this judgment three Warner theatres play feature films first run at a time when there is not more than one other theatre operating first run in Elmira.
Fairmont, W. Va.	One theatre if by the end of one year from the date of this judgment an independent theatre is not regularly playing first run, or if thereafter (during a period of five years from the date of this judgment) for the greater part of any year an independent theatre is not regularly playing first run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.
Gettysburg, Pa.	One theatre; purchaser to have choice of theatres if Gettysburg is designated as provided in footnote 1.
Greensburg, Pa.	One theatre.
Hagerstown, Md.	One theatre.
Hoboken, N. J.	One theatre.
Irvington, N. J.	One theatre.
Lawrence, Mass.	One theatre.
Lexington, Va.	One theatre.
Manchester, Conn.	One theatre.

MARTINSBURG, W. VA.	Apollo or Central and Strand or State.
MEDINA, N. Y.	One theatre.
MILLVILLE, N. J.	One theatre.
MILWAUKEE, WIS.	Warner or the Alhambra if by the end of one year from the date of this judgment an independent theatre is not regularly playing first run, or if thereafter (during a period of five years from the date of this judgment) for the greater part of any year an independent theatre is not regularly playing first run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.
MONTCLAIR, N. J.	Claridge or Wellmont or Montclair.
NEWARK, N. J.	Stanley or Mayfair and Central or Tivoli or Savoy; the Ritz shall at the option of the defendant or its successor be divested or be subjected to a product limitation as provided in the footnote hereto,[4] if during a

[4] For a period of three years, defendant shall not license:

a. More than 60% of the feature films released by the major distributors for first neighborhood run exhibition in any fiscal year, except as to pictures for which competitors who have had an opportunity to request licenses have not made an offer or have made an insubstantial offer; and

[Footnote continued on following page.]

period of three years from the date of this judgment an independent operator of a theatre in the Springfield Avenue zone, having a theatre suitable for first neighborhood run operation, is not afforded a reasonable opportunity to procure films for such theatre on a first neighborhood run basis if he so desires. If the parties disagree as to whether this condition has occurred, the matter may be presented to the Court for its determination. In that event, there shall be no burden of proof on either party, nor shall the defendant be excused from making this election because the condition may not exist at the time the matter is presented to or heard by the Court. In the event the condition is found to have occurred and the defendant chooses the product limitation, the three year period of such limitation shall run from the time the defendant or its successor shall have notified the Court, the Attorney General, and the independent operator of its election, which shall be made within 30 days after the Court's

[Footnote continued from preceding page.]

b. More than 48 feature films from among the eighty pictures constituting the aggregate of the ten pictures released by each of the major distributors, respectively, for first neighborhood run exhibition in any fiscal year, which are allocated by the respective distributor to its highest selling bracket or brackets, except as to pictures for which competitors who have had an opportunity to request licenses have not made an offer or have made an insubstantial offer.

ruling; Capitol or Globe if by the end of one year from the date of this judgment an independent theatre is not regularly playing second run downtown Newark, or if thereafter (during a period of five years from the date of this judgment) for the greater part of any year an independent theatre is not regularly playing second run downtown Newark. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

NEW BRITAIN, CONN. Strand or Embassy or Capitol, but if Capitol is selected defendant shall divest one other theatre if by the end of a year from the disposition of the Capitol an independent theatre is not regularly playing first run or if thereafter (during a period of five years from the date of the disposition of the Capitol) for the greater part of any year an independent theatre is not regularly playing first run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

PASSAIC, N. J.	Montauk or Capitol or Central or Playhouse. If the Playhouse[5] is disposed of in lieu of one of the other three theatres, then one of the other three theatres shall be disposed of if by the end of a year from the date of the disposition of the Playhouse no independent theatre is regularly playing on a first run basis or if thereafter (during five years from the date of the disposition of the Playhouse) for the greater part of any year there is not an independent theatre playing on a first run basis. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.
PATERSON, N. J.	One theatre.
PHILADELPHIA, PA.	Midway or Allegheny; Colonial or Orpheum or Vernon; Rexy[6] and Alhambra or Plaza or Broadway or Savoia, and one theatre shall be divested in addition to the two hereinabove required to be divested in this zone, which shall be the Broadway or the Savoia or another theatre

[5] Warner or its exhibitor successor shall file with the Court and the Attorney General a statement of intention by the purchaser of the Playhouse to operate the Playhouse on a first run basis.

[6] Warner or its exhibitor successor shall file with the Attorney General and the Court a statement of intention by the purchaser of the Rexy to operate the Rexy on a first neighborhood run basis.

operated on a first neighborhood run basis, if by the end of one year from the disposition of the Rexy an independent theatre is not regularly playing on a first neighborhood run, or if thereafter (during a period of five years from the date of disposition of the Rexy) for the greater part of any year an independent theatre is not regularly playing on a first neighborhood run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant. Colney or Fernrock[7] and Diamond or Keystone;[7] the Oxford or the Liberty shall at the option of the defendant or its successor be divested or be subjected to a product limitation as provided in footnote 4 (except substitute therein "second" for "first" neighborhood run), if during a period of three years from the date of this judgment an independent operator or operators of two theatres in the Frankford and Mayfair zones (formerly known as Frankford zone), having theatres suitable for second neighborhood run operation, is or are not afforded a reasonable opportunity to procure films for such theatres on

[7] At the option of Warner, the Bromley may be chosen as one of the two theatres to be divested.

a second neighborhood run basis if he or they so desire. If the parties disagree as to whether this condition has occurred, the matter may be presented to the Court for its determination. In that event, there shall be no burden of proof on either party, nor shall the defendant be excused from making this election because the condition may not exist at the time the matter is presented to or heard by the Court. In the event the condition is found to have occurred and the defendant chooses the product limitation, the three year period of such limitation shall run from the time the defendant or its successor shall have notified the Court, the Attorney General, and the independent operator or operators of its election, which shall be made within 30 days after the Court's ruling; the Forum shall at the option of the defendant or its successor be divested or be subjected to a product limitation as provided in footnote 4 (except substitute therein "Forum availability" for "first neighborhood run exhibition"), if during a period of three years from the date of this judgment an independent operator of a theatre in the Frankford zone, having a theatre suitable for playing on the same availability as the Forum, is not afforded a reasonable opportunity to procure films for such theatre on such availability if he

so desires. If the parties disagree as to whether this condition has occurred, the matter may be presented to the Court for its determination. In that event, there shall be no burden of proof on either party, nor shall the defendant be excused from making this election because the condition may not exist at the time the matter is presented to or heard by the Court. In the event the condition is found to have occurred and the defendant chooses the product limitation, the three year period of such limitation shall run from the time the defendant or its successor shall have notified the Court, the Attorney General, and the independent operator of its election, which shall be made within 30 days after the Court's ruling; Wishart or Richmond, if an independent theatre in the Kensington zone is not regularly playing third neighborhood run by the end of a year from the date of this judgment or if thereafter (during a period of five years from the date of this judgment) for the greater part of any year an independent theatre in the Kensington zone is not regularly playing third neighborhood run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

The Terminal if at any time for a period of 3 years after Warner begins operating the theatre pursuant to the provisions of paragraph 8 of this section V it is operated on a regular policy of exhibiting feature films earlier than seventeen to twenty-one days after first neighborhood run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination in which event the burden of proof shall be on the defendant.

The Wynne if at any time for a period of 3 years from the date of this judgment it is operated on a regular policy of exhibiting feature films earlier than third neighborhood run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination in which event the burden of proof shall be on the defendant.

PITTSBURGH, PA.

Strand or Center; Sheridan or Regent or Enright or Cameraphone. If Cameraphone is disposed of in lieu of one of the other three theatres, then one other of these three theatres shall at the option of the defendant or its successor be divested or be subjected to a product limitation as provided in footnote 4, if during a period of three years from the date of this judgment an

independent operator of a theatre in the East Liberty zone having a theatre suitable for first neighborhood run operation, is not afforded reasonable opportunity to procure feature films for such theatre on a first neighborhood run basis if he so desires. If the parties disagree as to whether this condition has occurred, the matter may be presented to the Court for its determination. In that event, there shall be no burden of proof on either party, nor shall the defendant be excused from making this election because the condition may not exist at the time the matter is presented to or heard by the Court. In the event the condition is found to have occurred and the defendant chooses the product limitation, the three year period of such limitation shall run from the time the defendant or its successor shall have notified the Court, the Attorney General, and the independent operator of its election, which shall be made within 30 days after the Court's ruling; and one other of these three theatres shall at the option of the defendant or its successor be divested or be subjected to a product limitation as provided in footnote 4 (except substitute therein "second" for "first" neighborhood run), if during a period of three years from the date of this judgment an independent operator of a theatre in the East

Liberty zone having a theatre suitable for second neighborhood run operation is not afforded a reasonable opportunity to procure feature films for such theatre on a second neighborhood run basis if he so desires. If the parties disagree as to whether this condition has occurred, the matter may be presented to the Court for its determination. In that event, there shall be no burden of proof on either party, nor shall the defendant be excused from making this election because the condition may not exist at the time the matter is presented to or heard by the Court. In the event the condition is found to have occurred and the defendant chooses the product limitation, the three year period of such limitation shall run from the time the defendant or its successor shall have notified the Court, the Attorney General, and the independent operator of its election, which shall be made within 30 days after the Court's ruling.

The Schenley shall at the option of the defendant or its successor be divested or be subjected to a product limitation as provided in footnote 4, if during a period of three years from the date of this judgment an independent operator of a theatre in the Oakland zone, having a theatre suitable for first neighborhood run operation, is not afforded a reasonable opportunity to procure

	films for such theatre on a first neighborhood run basis if he so desires. If the parties disagree as to whether this condition has occurred, the matter may be presented to the Court for its determination. In that event, there shall be no burden of proof on either party, nor shall the defendant be excused from making this election because the condition may not exist at the time the matter is presented to or heard by the Court. In the event the condition is found to have occurred and the defendant chooses the product limitation, the three year period of such limitation shall run from the time the defendant or its successor shall have notified the Court, the Attorney General, and the independent operator of its election, which shall be made within 30 days after the Court's ruling.
PLEASANTVILLE, N. J.	One theatre, purchaser to have choice of theatres if Pleasantville is designated as provided in footnote 1.
PORTSMOUTH, OHIO	Columbia or LaRoy.
PUNXSUTAWNEY, PA.	One theatre.
RACINE, WIS.	One theatre.
SALEM, OREGON	Elsinore or Capitol if at any time during a period of 3 years from the date of this judgment two Warner theatres play first run at a time when there is not more than one other theatre operating first run

	shown at the Capitol Theatre pictures for which a competitor who has had an opportunity to request licenses had not made an offer or had made an insubstantial offer, provided that upon the sole determination by the Attorney General or an Assistant Attorney General that a competing first run theatre will be adversely affected by the first run showing of such pictures at such theatre, Warner shall cease the showing of any pictures first run at such theatre within 30 days after receipt by Warner of the notice by the Attorney General of his determination.
SHARON, PA.	One theatre.
SHEBOYGAN, WIS.	Two theatres.
SIDNEY, OHIO	One theatre, purchaser to have choice of theatre if Sidney is designated as provided in footnote 1.
SILVER SPRING, MD.	If at any time during a period of three years from the date of this judgment the Flower Theatre in Silver Spring is subordinated in playing position to the Silver Theatre while the latter is operated by Warner the question of divestiture of one theatre shall be reopened.
STATE COLLEGE, PA.	Cathaum or State.
STAUNTON, VA.	One theatre, if by end of a year there is not an independent theatre regularly playing first run or if thereafter (during a period of 5

	years from the date of this judgment) during the greater part of any year there is not an independent theatre regularly playing first run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.
TARENTUM, PA.	One theatre, if by end of a year there is not an independent theatre regularly playing first run or if thereafter (during a period of 5 years from the date of this judgment) during the greater part of any year there is not an independent theatre regularly playing first run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.
TITUSVILLE, PA.	One theatre.
TORRINGTON, CONN.	Warner or Palace.
TYRONE, PA.	One theatre.
WARREN, PA.	One theatre.
WASHINGTON, D. C.	Tivoli or Sheridan.
WASHINGTON, PA.	One theatre if by end of a year there is not an independent theatre regularly playing first run or if thereafter (during a period of 5 years from the date of this judgment) during the greater part of

	any year there is not an independent theatre regularly playing first run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.
Waynesboro, Pa.	One theatre.
Wellsville, N. Y.	One theatre.
West Chester, Pa.	One theatre.
Wilkinsburg, Pa.	Roland or State.
Willimantic, Conn.	One theatre.
Wilmington, Del.	Warner or Queen or Arcadia or Grand.
York, Pa.	One theatre, if by end of a year there is not an independent theatre regularly playing first run or if thereafter (during a period of 5 years from the date of this judgment) during the greater part of any year there is not an independent theatre regularly playing first run. If the parties disagree on the issue of whether or not this condition has occurred, such issue may be presented to the Court for its determination, in which event the burden of proof shall be on the defendant.

2. Warner or its successor shall within one year dispose of all of the interest of Warner in one half of the theatres presently required to be disposed of and within

two years of all of the theatres presently required to be disposed of, under paragraph 1 of this Section V. All theatres which may in the future be required to be disposed of under paragraph 1 of this Section V shall be disposed of within six months after the time they are required to be divested. All such dispositions shall be made to parties not defendants in Eq. Cause No. 87-273 or owned or controlled by or affiliated with defendants therein, or their successors.

3. As to not to exceed 12 of the theatres presently required to be disposed under paragraph 1 of this Section V, in the event that Warner or its exhibitor successor is unable to sell on reasonable terms its interest therein, Warner or its exhibitor successor upon application to the Court in any such case, and with the approval of the Court first obtained, may lease or sublease the same to a party not a defendant herein or owned or controlled by or affiliated with a defendant herein; on condition, however, that no such lease or sublease shall contain any rental provisions based upon a share of the profits of the theatre covered by the lease or any other theatre; and further on condition that Warner or its exhibitor successor shall thereafter sell its interest in any such theatre so leased or subleased as soon thereafter as it can do so upon reasonable terms, and in any event prior to the expiration of such lease or sublease.

4. The Cadet, Elite and Poplar theatres in Philadelphia, Pa., shall be made available for a period of one year for sale or lease. Preference shall be given reasonable offers for motion picture theatre purposes, and until 30 days after making these properties so available for sale, no offer for non-motion picture purposes shall be accepted. After one year, these properties may be retained, sold or leased for any purpose; provided that if within a period of three years from the expiration of such year Warner desires to operate any of said theatres as

a motion picture theatre, Warner shall notify the Attorney General of its intention so to do, and if within 14 days thereafter the Attorney General notifies Warner that such operation will unduly restrain competition in the exhibition of featured motion pictures in the same competitive area as such theatre, Warner may present the matter to the Court for its determination.

5. If Warner or its exhibitor successor should at any time after the expiration of the present leases or the renewals thereof make the Playhouse premises in Ridgewood, N. J., available as a whole for sale or lease, preference shall be given to reasonable offers for motion picture theatre purposes, and until 30 days after making these premises so available, no offer for non-motion picture theatre purposes shall be accepted.

6. If the existing decree entered in the United States District Court for the Northern District of Illinois, Eastern Division, in the case of Florence B. Bigelow, et al., against RKO Radio Pictures Inc., et al., shall be modified or vacated, and if, after such modification or vacating, the competitive situation in outlying Chicago (outlying Chicago for the purposes hereof including the entire city of Chicago except the downtown portion of Chicago and also including Berwyn, Blue Island, Chicago Heights, Evanston, La Grange and Oak Park) shall be less favorable for the independent exhibitors in outlying Chicago (an independent exhibitor for the purposes hereof meaning an exhibitor who is not a defendant herein or owned or controlled by or affiliated with a defendant herein), and if such less favorable competitive situation shall be shown by the Attorney General to the satisfaction of the Court in which this consent judgment is entered, then such Court may order such relief against, or with respect to, the theatres of Warner or its exhibitor successor located in outlying Chicago as it may deem just or proper in order to create proper competitive conditions in outlying Chicago or in any particular section thereof.

7. This judgment shall not affect the rights and obligations of the parties under the consent orders entered in Eq. Cause No. 87-273 by stipulation between the plaintiff and the Warner defendants with respect to theatres held in conjunction with non-defendants.

8. Nothing in this judgment shall be construed to prohibit Warner until the divorcement required herein has been effectuated and thereafter its exhibitor successor from owning and operating one theatre in Bridgeport, Conn., and one theatre in Harrison, New Jersey, to be constructed in accordance with existing contractual commitments or amendments thereto, or to prohibit Warner from retaking and operating, in the future, the following theatres of Warner now under lease to others:

Aldine Theatre,	Wilmington, Del.
Ritz Theatre,	Reading, Pa.
Terminal Theatre,	Philadelphia, Pa.

VI.

A. The defendant, Warner Bros. Pictures, Inc., shall present to its stockholders not later than ninety (90) days after the entry of this judgment, a plan of reorganization to effect the divorcement of its theatre assets located in the United States from its production and distribution assets. Such plan shall provide that all of said theatre assets, together with other assets which are not production or distribution assets located in the United States, shall be transferred and assigned to one of the new companies, viz., the New Theatre Company, which shall succeed to and receive such assets, and all of said production and distribution assets, together with other assets which are not theatre assets located in the United States, shall be transferred and assigned to the other new company, viz., the New Picture Company, which shall succeed to and receive such assets, and the New Theatre Company shall distribute pro rata to the stockholders of Warner Bros.

Pictures; Inc., in exchange for the assets so received by it, its common capital stock, and the New Picture Company shall distribute pro rata to the stockholders of Warner Bros. Pictures, Inc., in exchange for the assets so received by it, its common capital stock, and thereupon Warner Bros. Pictures, Inc. shall be dissolved.

B. The New Picture Company shall not engage in the exhibition business, and the New Theatre Company shall not engage in the distribution business, except that permission to the New Picture Company to engage in the exhibition business or to the New Theatre Company to engage in the distribution business may be granted by the Court upon notice to the Attorney General and upon a showing that any such engagement shall not unreasonably restrain competition in the distribution or exhibition of motion pictures.

C. Upon the reorganization provided in this Section VI, Warner Bros. Pictures, Inc. shall cause the New Picture Company to file with the Court its consent to be bound by, and receive the benefits of, the terms of Sections III, VI, VII, VIII, X and XI of this judgment (with respect to Sections VII and VIII in so far as they are applicable to the New Picture Company), and thereafter the New Picture Company shall be in all respects bound by, and receive the benefits of, the terms of such Sections of this judgment.

D. Upon the reorganization provided in this Section VI, Warner Bros. Pictures, Inc. shall cause the New Theatre Company to file with the Court its consent to be bound by, and receive the benefits of, the terms of Sections IV, V, VI, VII, VIII, X and XI of this judgment (with respect to Sections VII and VIII in so far as they are applicable to the New Theatre Company), and thereafter the New Theatre Company shall be in all respects bound by, and receive the benefits of, the terms of such Sections of this judgment.

VII.

A. Within a period not to exceed twenty-seven months after the entry of this judgment the New Theatre Company and the New Picture Company shall be operated wholly independently of one another and shall have no common directors, officers, agents or employees. Each of them shall thereafter be enjoined from attempting to control or influence the business or operating policies of the other by any means whatsoever. The foregoing provisions shall not be construed to prohibit the directors, officers, agents or employees of the Warner defendants, who become affiliated with either one of said new companies and who receive stock in such companies in exchange for stock presently held by them in Warner Bros. Pictures, Inc., from so acquiring stock in the company with which they do not become affiliated and holding such stock for a sufficient period of time to permit them to sell such stock to persons not affiliated with the seller's company without undue hardship to the seller, provided that in any event such sale shall be made within a period not to exceed one year from the effective date of the reorganization of Warner Bros. Pictures, Inc., and provided further that the provisions of this sentence as to the disposition of stock shall not apply to any agent or employee whose legal or beneficial interest in stock does not exceed one per cent (1%) of the total amount of stock outstanding in the company, and shall not apply to the persons who are subject to the provisions of Section VIII hereunder.

B. The by-laws of the New Theatre Company shall provide that a person affiliated with any other motion picture theatre circuit cannot be elected an officer or a director until he has been approved by the Attorney General and the Court; and that in no event can an officer or a director be affiliated with any motion picture theatre circuit (other than the Warner defendants) which has been

a defendant in an anti-trust suit brought by the Government, relating to the production, distribution or exhibition of motion pictures. The by-laws of the New Picture Company shall provide that a person who is a director, officer, agent, employee or substantial stockholder of another motion picture distribution company cannot be elected an officer or a director.

VIII.

Harry M., Albert and Jack L. Warner represent that they now own approximately 18% of the outstanding common stock (excluding treasury stock) of Warner Bros. Pictures, Inc. and that certain members of their families, including their wives, now own approximately 6% of such stock. Within twenty-seven months from the date hereof, the said Warners and their families shall either:

A. Dispose of said holdings of the stock of (1) the New Picture Company or (2) the New Theatre Company, as they may elect, to a purchaser who is not a stockholder in the other company, a defendant herein or in an anti-trust suit brought by the Government relating to the production, distribution, or exhibition of motion pictures against whom a judgment has been entered, or owned or controlled by or affiliated with such a defendant or a company resulting from divorcements provided for in judgments entered in Equity Cause No. 87-273, and the said Warners shall use their best efforts so to dispose of said stock; or

B. Deposit with a trustee designated by the Court said holdings of stock of the New Picture Company or the New Theatre Company, as they may elect, under a voting trust agreement whereby the trustee shall possess and be entitled to exercise all the voting rights of such shares, including the right to execute proxies and consents with

respect thereto. Such voting trust agreement shall thereafter remain in force until the said Harry M. Warner, Albert Warner, Jack L. Warner, and their families shall have sold said holdings of stock of the New Picture Company or the New Theatre Company to a purchaser or purchasers as provided in subdivision A above, and upon such sale and transfer such voting trust agreement shall automatically terminate. Such trust shall be upon such other terms and conditions, including compensation to the trustee, as shall be prescribed by the Court. During the period of such voting trust, Harry M. Warner, Albert Warner, Jack L. Warner, and their families, shall be entitled to receive all dividends and other distributions made on account of the trusteed shares, and proceeds from the sale thereof.

For the purpose of evidencing their consent to be bound by the terms of this Section VIII of this judgment, Harry M. Warner, Albert Warner and Jack L. Warner individually have consented to its entry. The obligations in this Section VIII with respect to the stock in the New Picture Company, or the stock in the New Theatre Company, as the case may be, shall be limited, so far as the families of the said Warners are concerned, to the stock received in exchange for approximately 6% of stock of Warner Bros. Pictures, Inc. mentioned in this Section VIII as owned by certain members of the said families.

The stock disposed of in one company as provided in subdivision A above may not be voted if the holder, otherwise entitled to vote the same, be a person with a legal or beneficial stock interest, or be a corporation with a stock interest directly or through subsidiaries or affiliates, in the other company.

IX.

A. Nothing contained in this judgment shall be construed to limit, in any way whatsoever, the right of the Warner defendants, during the period of 12 months from

the date hereof, or until the reorganization provided in Section VI hereof shall have been completed, whichever shall be earlier, to license or in any way to provide for the exhibition of any or all of the motion pictures which it may distribute; in such manner, and upon such terms, and subject to such conditions as may be satisfactory to it, in any theatre in which Warner Bros. Pictures Inc. has or may acquire a proprietary interest of ninety-five per cent or more either directly or through subsidiaries.

B. After 12 months from the date hereof, or until the reorganization provided in Section VI hereof shall have been completed, whichever shall be earlier, the provision of the preceding paragraph shall terminate and be of no effect; and from and after such date all licenses of motion pictures distributed by the New Picture Company or Warner Bros. Pictures Inc. for exhibition in any theatre, regardless of its owner or operator, shall be in all respects subject to the terms of this judgment.

X.

A. For the purpose of securing compliance with this judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General, and on notice to any defendant, reasonable as to time and subject matter, made to such defendant at its principal office, and subject to any legally recognized privilege (1) be permitted reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this judgment, and that during the times that the plaintiff shall desire such access, counsel for such defendant may be

present, and (2) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its officers or employees regarding any such matters, at which interviews counsel for the officer or employee interviewed and counsel for such defendant may be present. For the purpose of securing compliance with this judgment any defendant upon the written request of the Attorney General, or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in this judgment as from time to time may be necessary for the purpose of enforcement of this judgment.

B. Information obtained pursuant to the provisions of this section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

XI.

A. For the purpose of any application under this judgment, the plaintiff and the Warner defendants, hereby waive the necessity of convening a court of three judges pursuant to the expediting certificate filed herein on June 13, 1945; and agree that any application may be determined by any judge sitting in the United States District Court for the Southern District of New York.

Any application by either party under this judgment shall be upon reasonable notice to the other.

B. Jurisdiction of this cause is retained for the purpose of enabling any of the parties and their successors to this consent judgment, and no others, to apply to the Court at any time for such orders or direction as may be necessary or appropriate for the construction, modification or

carrying out of the same, for the enforcement of compliance therewith, and for the punishment of violations thereof, or for other or further relief.

Dated: January 4th, 1951.

AUGUSTUS N. HAND
United States Circuit Judge

HENRY W. GODDARD
United States District Judge

ALFRED C. COXE
United States District Judge

We hereby consent to the entry of the foregoing judgment.

For the Plaintiff

PEYTON FORD
Acting Attorney General
United States Attorney

WM. AMORY UNDERHILL
Acting Asst. Attorney General

PHILIP MARCUS
SIGMUND TIMBERG
Spec. Assts. to Atty. Gen.

MAURICE SILVERMAN
HAROLD LASSER
Trial Attorneys

For the Defendants

WARNER BROS. PICTURES INC.
WARNER BROS. PICTURES DISTRIBUTING CORPORATION
WARNER BROS. CIRCUIT MANAGEMENT CORPORATION

By

JOSEPH M. PROSKAUER
ROBERT W. PERKINS
Their Attorneys

We hereby consent to the entry of Section VIII of the above judgment.

HARRY M. WARNER

ALBERT WARNER

JACK L. WARNER

By

STANLEIGH P. FRIEDMAN
Their Attorney

EXHIBIT 3

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Equity No. 87-273

UNITED STATES OF AMERICA, *Plaintiff*,

against

LOEW'S INCORPORATED, WARNER BROS. PICTURES, INC., ET AL., *Defendants*.

SUTPHEN ESTATES, INC., *Applicant for Intervention*.

ORDER DENYING MOTION FOR LEAVE TO INTERVENE

This cause having come on for hearing on the 4th day of January, 1951 on the order to show cause herein dated January 2, 1951 made on the application of Sutphen Estates, Inc., why said Sutphen Estates, Inc. should not be granted leave to intervene in this cause, and this Court having heard argument on said motion prior to the signing on said date of the judgment made herein on the consent thereto of the United States of America, Warner Bros. Pictures, Inc., Warner Bros. Distributing Corporation, Warner Bros. Circuit Management Corporation, and on the consent to Section VIII thereof by Harry M. Warner, Albert Warner and Jack L. Warner, and having announced at the conclusion of said argument its decision denying said motion, it is

Ordered, that the motion of Sutphen Estates, Inc. for leave to intervene in this cause is denied.

Dated: February 26, 1951.

(S.) AUGUSTUS N. HAND,
Circuit Judge.

(S.) HENRY W. GODDARD,
District Judge.

(S.) ALFRED C. COXE,
District Judge.

EXHIBIT 4

Appellant's papers on motion to intervene, including:

(a) Order to Show Cause.
(b) Affidavit.
(c) Pleading in Intervention.

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Equity No. 87-273

UNITED STATES OF AMERICA, *Plaintiff*,

against

LOEW'S INCORPORATED, WARNER BROS. PICTURES, INC., ET AL., *Defendants*.

SUTPHEN ESTATES, INC., *Applicant for Intervention*.

ORDER TO SHOW CAUSE ON MOTION TO INTERVENE

On the annexed affidavit of Bertram F. Shipman, sworn to the 2nd day of January, 1951; on the annexed Pleading in Intervention on behalf of Sutphen Estates, Inc.; and upon all of the pleadings and other papers filed and all of the proceedings heretofore had herein,

Let the parties affected by said pleading in intervention and their attorneys show cause at a term of this court to be held in Room 506 of the United States Court House, Foley Square, in the Borough of Manhattan, City, County and State of New York, on the 4th day of January, 1951, at 4 o'clock in the afternoon of that day or as soon thereafter as counsel can be heard, why an order should not be made and entered herein granting leave to said Sutphen Estates, Inc. to intervene in this action in order to assert the claim set forth in the annexed Pleading in Intervention; and

Good cause being shown and sufficient reason appearing therefor, it is

Ordered, that service of a copy of this order and of said Affidavit and of said Pleading in Intervention on the attorneys for plaintiff The United States of America, and on the attorneys for defendants Warner Bros. Pictures, Inc., Warner Bros. Pictures Distributing Corporation and Wraner Bros. Circuit Management Corproation on or before 12 o'clock noon of the 3rd day of January, 1951, shall be deemed good and sufficient service thereof.

Dated: New York, N. Y., January 2, 1951.

AUGUSTUS N. HAND,
U. S. C. J.

HENRY W. GODDARD,
U. S. D. J.

ALFRED C. COXE,
U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Equity No. 87-273

UNITED STATES OF AMERICA, Plaintiff,

against

LOEW'S INCORPORATED, WARNER BROS. PICTURES, INC., ET AL.,
Defendants.

SUTPHEN ESTATES, INC., Applicant for Intervention.

AFFIDAVIT

Bertram F. Shipman, being duly sworn, deposes and says:

1. I am a member of the firm of Mudge, Stern, Williams & Tucker, attorneys for Sutphen Estates, Inc., a New York corporation, the Intervener in the annexed Pleading in Intervention, and I am familiar with the matters relating

thereto and herein set forth. I make this affidavit in support of an application for an Order to Show Cause directed to the parties in this action affected thereby, namely, plaintiff The United States of America, and defendants Warner Bros. Pictures, Inc. (hereinafter referred to as Warner), Warner Bros. Pictures Distributing Corporation and Warner Bros. Circuit Management Corporation, granting leave to said Intervener to intervene in this action in order to assert the claim set forth in said Pleading in Intervention.

2. Intervener is the landlord of the very valuable property on the northwest corner of Broadway and 47th Street in the City of New York, New York on which is located the Strand Theatre. Said property is under lease to Stanley Mark Strand Corporation (hereinafter referred to as Tenant) for a term of 98 years beginning January 1, 1929, the lease as amended providing, among other things, for an annual rental, currently at the rate of $300,000 per annum in addition to taxes and other charges payable by Tenant, and including an obligation on the part of Tenant to alter and improve the buildings on the property, to secure which obligation Tenant is required to deposit with Intervener $100,000 a year for 10 years beginning with December 15, 1948, a total of $1,000,000, of which $300,000 has been so deposited to date. All obligations of Tenant under the lease are unconditionally guaranteed by defendant Warner which owns approximately 99% of the stock of Stanley Company of America, which owns all of the stock of Tenant.

3. Upon information and belief, a judgment proposed to be consented to herein by plaintiff and Warner, among others, and proposed to be made and entered herein, provides for the transfer of all of the so-called exhibition assets of Warner to a new corporation in exchange for all of its capital stock, the transfer of all other assets of Warner to another new corporation in exchange for all of its capital stock, the distribution pro rata to stockholders of Warner of all of the shares of capital stock of said two new corporations and the dissolution of Warner; and directs that a plan of reorganization providing for such transfers, distribution and dissolution be submitted to stockholders of Warner for approval within 90 days from the date of said proposed con-

sent judgment. Upon information and belief, said proposed consent judgment contains no express provisions preserving or protecting the rights of Intervener with respect to said guaranty by Warner and may contain provisions which may or may be claimed to limit or restrict Warner in providing adequately for a substitute for its guaranty upon its dissolution.

4. Intervener's motion to intervene in this motion is made under Rule 24 of the Federal Rules of Civil Procedure as Amended, and is based upon the grounds that:

(a) Intervener is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of this court in connection with said consent judgment;

(b) representation of Intervener's interest by existing parties herein is or may be inadequate and Intervener is or may be bound by said consent judgment; and

(c) Intervener's claim and the main action herein insofar as said consent judgment is involved have questions of law and fact in common;

all as more fully appears from said Pleading in Intervention to which reference is hereby made.

5. I have discussed the claim set forth in said Pleading in Intervention with officers and other representatives of Intervener, and have considered said Lease and the agreements supplemental thereto, including the guaranty agreement of Warner and the agreements supplemental thereto, and on the basis of my investigation I believe and I have advised Intervener that the claim set forth in said Pleading in Intervention is a meritorious claim, and that Intervener should be permitted to intervene in this action in order to assert said claim, and in order that said consent judgment herein or other order made herein shall make adequate provision for the preservation or protection of the rights of Intervener with respect to the guaranty by Warner of the obligations set forth in said Lease as amended, and directing that an equivalent substitute be provided for said guaranty

in connection with the transfer of Warner's assets and its dissolution as contemplated in said consent judgment.

6. The reason that this application is made by Order to Show Cause rather than by Notice of Motion is that an Order to Show Cause is necessary in order to bring on the Motion to Intervene herein before this court on the 4th day of January, 1951, when said proposed consent judgment is to be presented to this court.

7. No previous or other application has been heretofore made for the relief sought herein.

Wherefore it is respectfully requested that an order be made and entered herein granting leave to Intervener to intervene in this action in order to assert the claim set forth in said Pleading in Intervention, and granting to Intervener such other, further and different relief as in the premises may be just, equitable and proper.

BERTRAM F. SHIPMAN.

Sworn to before me this 2nd day of January, 1951.

[Notarial Seal]

BERNARD A. GUNN,
Notary Public, State of New York
No. 03-1604800
Qualified in Bronx County
Certificates filed with Bronx & N. Y.
Co. Clk's. & Register's Offices
Term Expires March 30, 1951

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Equity No. 87-273

UNITED STATES OF AMERICA, *Plaintiff*,

against

LOEW'S INCORPORATED, WARNER BROS. PICTURES, INC., ET AL., *Defendants*,

SUTPHEN ESTATES, INC., *Intervener*.

PLEADING IN INTERVENTION

Sutphen Estates, Inc., the Intervener herein, for its Pleading in Intervention alleges as follows:

1. Sutphen Estates, Inc., the Intervener herein, is a corporation, duly organized and existing under the laws of the State of New York, having its principal office at No. 60 East 42nd Street, in the Borough of Manhattan, City, County and State of New York.

2. On or about December 31, 1928, a certain Lease bearing said date (hereinafter called the Lease) was duly made, executed and entered into by and between Intervener as landlord and Stanley Mark Strand Corporation, a New York corporation, as tenant (hereinafter called Tenant). Said lease covers the premises described therein on the northwest corner of Broadway and 47th Street in the City of New York, together with the buildings thereon which include the Strand Theatre. Said Lease is for a full term of approximately 98 years beginning at the date of said Lease and ending December 31, 2026. By the terms of the Lease the current rental thereunder and until the end of the year 1952, is at the rate of Three Hundred Thousand Dollars ($300,000) per annum, payable in equal monthly installments in advance on the first day of each and every month. Thereafter and for successive periods of 21, 21, 21 and 11 years, respectively, the annual rental thereunder

is to be five per cent (5%) of the appraised value of the land, or the annual rental payable during the last year of the preceding period, whichever is greater, all as determined and as provided in the Lease. Tenant is obligated in addition to pay taxes, water rates, assessments, insurance premiums and other charges assumed by the Tenant and to be paid and discharged by the Tenant, all as in the Lease provided.

3. At all times herein referred to, Tenant has been and is a wholly owned subsidiary of Stanley Corporation of America, and said corporation has been and is a more than 90% owned subsidiary of Warner Bros. Pictures, Inc. (hereinafter called Warner).

4. Among the covenants to be performed by the Tenant under the Lease was a covenant set forth in Article Seventeenth of said Lease whereby Tenant agreed to demolish and remove the buildings upon the leased premises and to erect in place thereof a new Five Million Dollar ($5,000,000) theatre and office building within six years from January 1, 1929, at a cost and in the manner in the Lease provided.

5. On or about January 5, 1931, said new theatre and office building not having been built or commenced, at the request of Tenant and by an agreement dated January 5, 1931 between Intervener and Tenant, the time for the erection and completion of such new building was extended to January 1, 1938, and simultaneously by an agreement dated June 5, 1931 between Intervener and Warner, said Warner, for valuable consideration and as an inducement to Intervener to grant such extension, guaranteed the prompt and faithful performance by Tenant of all the terms, covenants and conditions of the Lease as amended. Subsequently, at the requests of Tenant and by agreements between Intervener, Tenant and Warner dated April 4, 1934, April 1, 1937 and October 10, 1941, respectively, the Lease was further amended and supplemented and the time for the erection and completion of said new building was successively extended to January 1, 1953.

6. Subsequently, at the request of Tenant and Warner and by agreement between Intervener, Tenant and Warner

dated as of December 15, 1948, Article Seventeenth of the Lease was deleted and a new Article Seventeenth was substituted which among other things provides for the alteration and improvement of the present buildings on the leased premises to modern two story and basement store office and commercial buildings with foundations and construction sufficient to support an eight story fireproof building, at an estimated cost of $1,000,000 all as elaborately provided in said agreement. Said agreement of December 15, 1948 provides that Tenant shall pay to Intervener on the 15th day of December, 1948, of the sum of One Hundred Thousand Dollars ($100,000) and a like sum on the 15th day of December in each year thereafter, to and including the 15th day of December, 1957, or an aggregate of One Million Dollars ($1,000,000) and that said amount shall be deposited by Intervener in a separate banking account captioned "Strand Theatre Building Trust Fund" and held by Intervener in trust as security against default of Tenant to alter and improve the buildings as provided in said agreement. In and by said agreement of December 15, 1948, Warner, as guarantor of the performance of the Lease by Tenant, approved and consented to said modification of the Lease, joined in the execution of said agreement of December 15, 1948, and agreed that Warner's said guaranty shall remain in full force and effect and shall include a guaranty of the performance by Tenant of all the obligations imposed upon and assumed by Tenant under the Lease as supplemented, amended and modified as above set forth, including all obligations imposed upon and assumed by Tenant by said agreement of December 15, 1948. Tenant has, to date, made three (3) annual payments into said Fund, totalling Three Hundred Thousand Dollars ($300,000), the last payment of One Hundred Thousand Dollars ($100,000) having been made on December 15, 1950.

7. Said Lease as so supplemented, amended and modified, and the guaranty by Warner of the obligations of Tenant thereunder, are and remain in full force and effect, and said guaranty by Warner constitutes a valid, effective and binding obligation of Warner to and for the benefit of Intervener.

8. Upon information and belief, in this action a judgment, proposed to be consented to by plaintiff and defendant Warner, among others, (hereinafter called Consent Judgment), is to be presented to this Court, whereby, among other things, this Court will decree that a plan of reorganization shall be presented to the stockholders of Warner providing in part that:

(a) Two new corporations will be formed;

(b) To one of such new corporations there will be transferred all of the so-called exhibition assets of Warner, which will include all of the shares of capital stock of Tenant, in exchange for all of the shares of capital stock of said new corporations;

(c) To the other of such new corporations there will be transferred all other assets of Warner in exchange for all of the shares of capital stock of said new corporation;

(d) All of the shares of capital stock of said two new corporations will be distributed pro rata to the stockholders of Warner; and

(e) Warner will thereafter be dissolved.

Upon information and belief, the Consent Judgment will further provide that prior to or at an early date after the transfer of the exhibition assets of Warner to said new corporation a substantial number of theatre properties included among said exhibition assets shall be disposed of.

9. Said proposed plan of reorganization, if adopted and carried out as provided by the Consent Judgment, will destroy, and deprive Intervener of its valuable rights in, to and under said guaranty of Warner, which is a valid, subsisting obligation, unrelated to any anti-trust violations by Warner or by any other defendant herein, and the destruction of which is unnecessary to full compliance by Warner and the other Warner defendants with the Final Decree of this Court made herein dated February 6, 1950.

10. Upon information and belief, said proposed plan of reorganization as provided in the Consent Judgment is not required by said Final Decree; that said Final Decree, although providing for a divorcement of the exhibition busi-

ness of Warner from its production and distribution business, afforded to Warner wide latitude in the formulation of a plan to comply with such divorcement provisions; and that the plan as provided in the Consent Judgment was selected by Warner in preference to numerous other alternatives as most advantageous economically or otherwise to the stockholders of Warner.

11. Upon information and belief the Consent Judgment although providing for the transfer by Warner of all of its assets and its dissolution, as aforesaid, contains no express provision for the preservation or protection of Intervener's rights in respect of said guaranty obligations of Warner nor for an equivalent substitute for said guaranty obligations, and no provision for such preservation or protection or for such an equivalent substitute is or will be made in or in connection with said plan of reorganization or the transfer of the assets of Warner or its dissolution.

12. Upon information and belief, unless the Consent Judgment or other order or judgment made in this action and/or said plan of reorganization provides for such preservation or protection or for an equivalent substitute for said guaranty obligations of Warner, which should include in any event the joint and several assumption of said guaranty obligations by said two new corporations, said transfer of the assets of Warner and its dissolution after the contemplated distribution to its stockholders, will destroy the valuable rights of Intervener in said guaranty obligations, to the immediate, great and irreparable damage of Intervener, and Intervener will be deprived of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States of America.

13. Upon information and belief, Intervener is entitled to intervene as of right in this action under Rule 24 of the Federal Rules of Civil Procedure as Amended upon the ground that under the circumstances herein set forth Intervener is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of this

court by virtue of the Consent Judgment, and upon the further ground that representation of Intervener's interest by existing parties in this action is or may be inadequate and that Intervener is or may be bound by the Consent Judgment.

14. Upon information and belief Intervener is entitled to be permitted to intervene in this action under Rule 24 of the Federal Rules of Civil Procedure as Amended upon the ground that Intervener's claim and the main action herein insofar as the Consent Judgment is involved have questions of law and fact in common.

15. Intervener has no adequate remedy save by intervention in this action, to avoid the immediate, great and irreparable damage to it which would result from the making and entry herein of the Consent Judgment without adequate provision being made in the Consent Judgment or other order of this Court in this action for the preservation or protection of Intervener's valuable rights as hereinaboye set forth.

Wherefore, Intervener respectfully prays:

(a) That Intervener be permitted to intervene in this action for the purpose of asserting the claim herein set forth;

(b) That this Court refrain from signing the Consent Judgment unless and until the Consent Judgment and the plan of reorganization of Warner provided for therein are amended to assure preservation of said guaranty obligations of Warner or to provide a fully equivalent substitute for such guaranty obligations which shall include an assumption of said guaranty obligations jointly and severally by the two new transferee corporations proposed to be formed;

(c) In the alternative, that this Court by separate order made herein direct that said guaranty obligations be preserved, or that a fully equivalent substitute therefor be provided which shall include an assumption of said guaranty obligations jointly and severally by the two new transferee corporations proposed to be formed; and

(d) That Intervener have such other, further and different relief as in the premises may be just, equitable and proper.

Dated: New York, N. Y., January 2, 1951.

BERTRAM F. SHIPMAN OF
Mudge, Stern, Williams & Tucker,
Attorneys for Intervener,
Office and P. O. Address,
40 Wall Street,
New York 5, N. Y.